

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202101737	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/17/2021 2:15 AM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 9/17/2022	EO SOL 9/17/2022	
Date/Time CV Reported Wed, 03/17/2021 10:18 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/17/2021 10:18 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joshua Zucker	15733	958202	077 PCT
2. PO Yehuda Topper	00575	966371	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Ronald Cheng	00000	936340	077 PCT
2. POM Reinaldo Rodriguez	22946	935630	077 PCT
3. POM Israel Dolce	18710	957552	077 PCT
4. POF Jenia Goeloe	06076	967525	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joshua Zucker	Abuse: Police Officer Joshua Zucker entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.PO Yehuda Topper	Abuse: Police Officer Yehuda Topper entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Joshua Zucker	Abuse: Police Officer Joshua Zucker questioned § 87(2)(b)	§ 87(2)(b)
D.POM Joshua Zucker	Abuse: Police Officer Joshua Zucker questioned § 87(2)(b)	§ 87(2)(b)

## Case Summary

On March 17<sup>th</sup>, 2021, § 87(2)(b) filed this complaint via the CCRB's Call Processing System on behalf of herself and her boyfriend § 87(2)(b).

At approximately 2:15 a.m., on March 17<sup>th</sup>, 2021, § 87(2)(b) and § 87(2)(b) were asleep in § 87(2)(b)'s house at § 87(2)(b) in Brooklyn when Police Officer Joshua Zucker and Police Officer Yehuda Topper, both of the 77<sup>th</sup> Precinct, entered through the unlocked side door (Allegations A and B - Abuse of Authority: Entry of Premises - § 87(2)(g)). Police Officer Zucker informed § 87(2)(b) and § 87(2)(b) that the officers received a call from an alarm company about an individual in a vacant building “who [was] not supposed to be in here” and asked for their IDs (Allegations C and D - Abuse of Authority: Question - § 87(2)(g), § 87(2)(b)). § 87(2)(b) handed Police Officer Zucker her ID, and told him that she owned “the place,” and that he did not need to see § 87(2)(b)'s ID. After reviewing § 87(2)(b)'s ID, Police Officer Zucker realized that they were inside § 87(2)(b) rather than § 87(2)(b). The two officers then left and proceeded ultimately to § 87(2)(b).

The investigation obtained video footage from § 87(2)(b) of the officers' entry into her house, attached to IA #16 (Board Review 01). Body-worn camera (BWC) footage of this incident was obtained from the BWCs of Police Officer Topper, Police Officer Zucker, Lieutenant Ronald Cheng, and Police Officer Reinaldo Rodriguez, and are attached in IA #47 (Board Review 02) and summarized in IA #48 (Board Review 03).

## Findings and Recommendations

**Allegation (A) - Abuse of Authority: Police Officer Joshua Zucker entered § 87(2)(b) in Brooklyn.**

**Allegation (B) - Abuse of Authority: Police Officer Yehuda Topper entered § 87(2)(b) in Brooklyn.**

§ 87(2)(b) was interviewed by phone on March 30<sup>th</sup>, 2021 (Board Review 04). § 87(2)(b) was interviewed by phone on April 2<sup>nd</sup>, 2021 (Board Review 05). Police Officer Zucker was interviewed on September 27<sup>th</sup>, 2021 (Board Review 06). Police Officer Topper was interviewed on October 4<sup>th</sup>, 2021 (Board Review 07).

The following facts are undisputed: Police Officer Zucker and Police Officer Topper entered § 87(2)(b) a brownstone house owned by § 87(2)(b) who resided on the ground floor—through the side door and interacted with her and § 87(2)(b).

§ 87(2)(b) and § 87(2)(b)'s statements were generally consistent. § 87(2)(b) stated she and § 87(2)(b) were asleep in § 87(2)(b)'s ground floor apartment when her dogs started barking. § 87(2)(b) heard people walking up the house's stoop and trying to get in through the first-floor gated entrance, and believed it was her tenants. Approximately two to three minutes later, § 87(2)(b) whose bedroom door was open at the time, realized that her apartment's front door had been opened, as she saw a “diagonal” of light shine in from the hallway. § 87(2)(b) screamed and asked who was there. There was no response. From her bedroom, § 87(2)(b) saw a person out in the hallway holding her entrance door open with his arm and was able to identify him as a police officer. After § 87(2)(b) screamed, § 87(2)(b) woke up and ran towards the apartment's front door. § 87(2)(b) followed him out of the bedroom, and asked Police Officer Zucker why he was in

her apartment. Police Officer Zucker told her he was responding to a 911 call about a break-in at a vacant building, and § 87(2)(b) replied her house was not vacant.

Police Officer Zucker and Police Officer Topper's statements were generally consistent, and both stated they were on patrol when they responded to a 911 radio run from a security company who was monitoring a trespassing situation. Police Officer Zucker stated that the security company was monitoring a "situation on camera" at § 87(2)(b) in Brooklyn concerning a male using a "bathroom" who was not "supposed" to be at the location. After exiting their car, Police Officer Zucker stood on a curb and looked at a "typical brownstone" at § 87(2)(b) approximately 15 feet away from him and said it had been "difficult" to "make out" the digits in front of him. Both Police Officer Zucker and Police Officer Topper stated that they had used their eyes to try and find the address and had not relied on GPS. Police Officer Zucker noted that the address was not "properly displayed" at § 87(2)(b) as the "digits" were displayed in an approximately one inch "non-reflective" "box" in a "poorly lit" area. (Police Officer Zucker did not recall where on the house the digit "box" was displayed.) When the Investigator asked Police Officer Zucker if he had trouble seeing the numbers or had not seen the address display entirely, he replied that he did not recall. Police Officer Zucker and Police Officer Topper both stated that they tried to "ascertain" the job's address but had an "issue locating the address" due to "poor visibility."

Police Officer Topper and Police Officer Zucker walked up to § 87(2)(b) believing that the residence corresponded to the "job" they had received. Police Officer Topper stated that they had looked for the numerical address on the house but had not seen it before entering § 87(2)(b). Police Officer Topper explained that they entered § 87(2)(b) believing it was the correct address based on the "numerics" of the prior three houses they had seen on the even side of the block. He did know the exact numbers but explained that the cross-streets were "correct" and the "numerics added up."

Police Officer Zucker and Police Officer Topper both stated they first went up the brownstone's stairs. Police Officer Zucker tried entering through the front door, but when the door was locked, he asked the 911 dispatcher to get in contact with the security company to get more information about the entry. Police Officer Zucker then told Police Officer Topper to check the basement's ground floor door underneath the front door. When Police Officer Topper "checked" the basement's ground floor door and found that it was open, he motioned for Police Officer Zucker to come down. Police Officer Zucker was the first to enter. Police Officer Topper stated that the officers announced their presence by stating they were the "police" twice.

Police Officer Zucker and Police Officer Topper heard dogs barking through a closed "doorway" on the right side of the hallway and approached the doorway as "sounds" were coming from "that room." Police Officer Zucker then opened the door and interacted with § 87(2)(b) and § 87(2)(b) at the door's threshold.

The Event associated with this incident (**Board Review 08**) noted that when the job was first created at 2:01 a.m., the location was listed as § 87(2)(b). The job was listed as a trespass/Inside with the male perpetrator visible on camera in a vacant residential building. The job's address remained § 87(2)(b) throughout the incident including at 2:08 a.m. when the officers were first supposed to have arrived at the location.

The BWC footage obtained from Police Officer Zucker and Police Officer Topper's BWCs (**Board Review 02**) captured the entire interaction with § 87(2)(b) and § 87(2)(b). At runtime 1:10 in Police Officer Topper's BWC, Police Officer Zucker walks up the stoop at § 87(2)(b). After finding the entrance door locked, Police Officer Zucker speaks into his police radio and says,

“§ 87(2)(b) Front door is locked” and asks if there is a code to “get in.” Police Officer Zucker then asks Police Officer Topper to “check the basement number.” Police Officer Topper walks down to the gated door by the side of the stoop, and calls out, “Yo, it’s open.” At 2:23, Police Officer Topper and Police Officer Zucker then walk through the unlocked gated door, and Police Officer Zucker opens a second unlocked red door that leads to a hallway. Police Officer Topper announces “Police.” At 3:29, Police Officer Zucker opens an unlocked door in the hallway and points his flashlight inside. When § 87(2)(b) asks, “Who is that?” Police Officer Zucker replies, “Police department.” Standing in the door’s threshold, Police Officer Zucker tells § 87(2)(b) and § 87(2)(b) that he received a call from an alarm company that there was an individual in a vacant building “who [was] not supposed to be in here.”

Payton v. New York 445 US 573 (1979) (Board Review 09), the Fourteenth Amendment was interpreted as prohibiting the warrantless and nonconsensual entry into a suspect’s home to conduct an arrest, absent exigent circumstances.

It is undisputed that Police Officer Zucker and Police Officer Topper mistakenly entered § 87(2)(b) believing it to be § 87(2)(b) which are three houses away from one another. The officers stated that they did not attempt to use GPS to find the correct address and simply relied on their unaided eyes to identify the house to which they were responding, despite noting that it was “difficult” to “make out” the digits in front of the house due to “poor visibility.”

§ 87(2)(g)

**Allegation (C) - Abuse of Authority: Police Officer Joshua Zucker questioned § 87(2)(b)**

**Allegation (D) - Abuse of Authority: Police Officer Joshua Zucker questioned § 87(2)(b)**

It is undisputed that after opening § 87(2)(b)’s door, Police Officer Zucker asked § 87(2)(b) and § 87(2)(b) for their IDs, and that after reviewing § 87(2)(b)’s ID, he realized that the officers had entered the wrong location.

Police Officer Zucker stated that he requested § 87(2)(b) and § 87(2)(b)’s identifications because he was responding to a call for trespassing and, at the time, believed he was inside the reported location and so needed to identify the people with whom he was speaking to determine whether they were trespassing.

Patrol Guide Procedure 212-11 states that a request for information (Level 1 Encounter) is an encounter between an officer and a civilian conducted for the purpose of requesting information from the civilian. The officer must have an objective credible reason to approach the civilian. The objective must be to gather information and not to focus on the person as a potential suspect. The officer may seek information related to the reasons the person was approached, such as name, address, and destination, if those questions are related to the objective credible reason for the approach. It defines objective credible reason as a reason based on more than a hunch or a whim. The reason to gather information may relate to a public safety function or a law enforcement function but need not be based on any indication of criminality (**Board Review 10**).

According to People v. De Bour, 40 N.Y.2d 210 (1976), in absence of any concrete indication of criminality, police officers can ask an individual non-threatening questions if they have an objective

credible reason to do so. People v. De Bour further indicated that police officers should not be unrealistically restricted from approaching individuals for information (**Board Review 11**).

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- Police Officer Joshua Zucker has been a member-of-service for six years and has been a subject in seven other CCRB complaints and 14 other allegations, one of which was substantiated.
  - In case # 201907293, physical force was substantiated against Police Officer Zucker. The NYPD did not impose any disciplinary action.
  - § 87(2)(g)
- Police Officer Yehuda Topper has been a member-of-service for three years and has been a subject in three other CCRB complaints and six other allegations, none of which have been substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- A Notice of Claim search request was sent to the New York City Office of the Comptroller on November 3<sup>rd</sup>, 2021. Any responsive Notice of Claim will be added to the case file upon receipt (**Board Review 13**).
- § 87(2)(b)

Squad: 2

Investigator: Julia Pagnamenta Inv. Pagnamenta 11/08/2021  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 11/8/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date